

1 Sara B. Brody (SBN 130222)
sbrody@sidley.com
2 SIDLEY AUSTIN LLP
555 California Street, Suite 2000
3 San Francisco, CA 94104
Telephone: 415-772-1279

4
5 Matthew J. Dolan (SBN 291150)
mdolan@sidley.com
SIDLEY AUSTIN LLP
6 1001 Page Mill Road, Building 1
Palo Alto, CA 94304
7 Telephone: 650-565-7106

8 Robin Wechkin (*pro hac vice* pending)
rwechkin@sidley.com
9 SIDLEY AUSTIN
1420 Fifth Avenue, Suite 1400
10 Seattle, WA 98101
Telephone: 415-439-1799

11 *Attorneys for Defendants*
12 Bloom Energy Corporation, KR Sridhar, Randy
Furr, L. John Doerr, Scott Sandell, Eddy
13 Zervigon, Colin L. Powell, Peter Teti, Mary K.
Bush, and Kelly A. Ayotte

14
15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 ELISSA M. ROBERTS, Individually and on
Behalf of All Others Similarly Situated,

18 Plaintiff,

19 vs.

20 BLOOM ENERGY CORPORATION, et al.,

21 Defendants.
22
23
24
25
26
27

Lead Case No. 4:19-cv-02935-HSG

CLASS ACTION

**STIPULATION AND ORDER
REGARDING HEARING ON LEAD
PLAINTIFF'S CONFIDENTIALITY
MOTION AND DEFENDANTS'
RESPONSE TO THE AMENDED
COMPLAINT (modified)**

Assigned to: Honorable Haywood S. Gilliam, Jr.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

- 3
4
5
6
7
8
9
0
1
2

3

4
5
6

7

8
920
2122
23

24
25

26

1 hearing on the Confidentiality Motion and are available for oral argument on this Court's February
2 6, 2020 calendar.

3 **Motion to Consolidate**

4 7. While this action was still assigned to Judge Orrick, Lead Plaintiff filed a motion to
5 consolidate this action with a second action, *Bolouri v. Bloom Energy Corp. et. al.*, Case No. 3:19-
6 cv-07259. Oral argument on the motion to consolidate was also scheduled for December 17, 2019.
7 That argument date was vacated when the case was reassigned to Judge Gilliam.

8 8. Lead Plaintiff believes that there is no need to reschedule argument on his motion to
9 consolidate because the motion is now moot. On December 11, 2019, the *Bolouri* action was
10 voluntarily dismissed.

11 **Response to the Amended Complaint**

12 9. On November 4, 2019, Lead Plaintiff filed an Amended Complaint in this action. The
13 Underwriter Defendants were named for the first time in the Amended Complaint.

14 10. The Bloom Energy Defendants' current deadline to respond to the Amended Complaint,
15 pursuant to a stipulated order entered by Judge Orrick on September 30, 2019, is January 10, 2020.
16 The same stipulated order provides that if the Bloom Energy Defendants respond by moving to
17 dismiss, the opposition to and reply in support of the motion will be due on March 10, 2020 and
18 April 24, 2020 respectively.

19 11. Pursuant to an agreement among the parties, the Underwriter Defendants' current deadline to
20 respond to the Amended Complaint is January 10, 2020.

21 12. Lead Plaintiff and the Bloom Energy Defendants have met and conferred and have agreed
22 that the most efficient course of proceeding for the parties and the Court is to reset the Defendants'
23 obligation to respond to the Amended Complaint at such time as Lead Plaintiff determines whether it
24 will seek to file a Second Amended Complaint. Lead Plaintiff's determination depends on this
25 Court's ruling on the pending Confidentiality Motion.

26 13. Lead Plaintiff and Defendants have further agreed that the best way to foster efficiency – but
27

1 at the same time keep the case moving forward – is by adopting the following deadlines:

- 2 a. Within 14 days of the Court’s ruling on the Confidentiality Order, Lead Plaintiff
3 will advise Defendants whether he intends to seek to file a Second Amended
4 Complaint or to stand on the current Amended Complaint.
- 5 b. If Lead Plaintiff advises Defendants that he intends to stand on the Amended
6 Complaint, Defendants shall respond to the Amended Complaint within 45 days
7 of the date on which Lead Plaintiff so advises Defendants. If Defendants’
8 response is a motion to dismiss, then the opposition will due 60 days from the
9 filing of the motion to dismiss and the reply will be due 35 days from the date of
10 the filing of the opposition.
- 11 c. If Lead Plaintiff advises Defendants that he intends to seek leave to file a Second
12 Amended Complaint, Lead Plaintiff will file that (proposed) complaint within 30
13 days of the Court’s ruling on the Confidentiality Motion.
- 14 d. Assuming Lead Plaintiff is granted leave to file his Second Amended Complaint,
15 Defendants’ response will be due within 45 days of the filing of the Second
16 Amended Complaint. If Defendants’ response is a motion to dismiss, then the
17 opposition will be due 60 days from the filing of the motion to dismiss and the
18 reply will be due 35 days from the date of the filing of the opposition.

19 **IT IS THEREFORE STIPULATED AND AGREED** by Lead Plaintiff and Defendants
20 that, subject to the Court’s approval:

- 21 1. Oral argument on the Confidentiality Motion will be heard on the Court’s February 6,
22 2020 calendar.
- 23 2. Following the Court’s ruling on Lead Plaintiffs’ motion to dismiss, the schedule set
24 forth in paragraph 13, above, will govern Defendants’ responses to the Amended
25 Complaint or Second Amended Complaint.

26 **IT IS SO STIPULATED.**

1 Date: December 27, 2019

By: /s/ Adam C. McCall

Adam C. McCall (SBN 302130)
Adam M. Apton (SBN 316506)
Email: amccall@zlk.com
Email: aapton@zlk.com
LEVI & KORSINSKY, LLP
44 Montgomery Street, Suite 650
San Francisco, CA 94104
Telephone: 415-373-1671

Attorneys for Lead Plaintiff

8 Date: December 27, 2019

By: /s/ Sara B. Brody

Sara B. Brody (SBN 130222)
sbrody@sidley.com
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA 94104
Telephone: 415-772-1279

Matthew J. Dolan (SBN 291150)
mdolan@sidley.com
SIDLEY AUSTIN LLP
1001 Page Mill Road, Building 1
Palo Alto, CA 94304
Telephone: 650-565-7106

Robin Wechkin (*pro hac vice* pending)
rwechkin@sidley.com
SIDLEY AUSTIN LLP
1420 Fifth Avenue, Suite 1400
Seattle, WA 98101
Telephone: 415-439-1799

Attorneys for the Bloom Energy Defendants

1 Date: December 27, 2019

By: /s/ Charlene S. Shimada

2 Charlene S. Shimada
3 charlene.shimada@morganlewis.com
4 Morgan Lewis & Bockius, LLP
5 One Market, Spear Street Tower
6 San Francisco, California 94105
7 Telephone: 415-442-1475


8 *Attorneys for the Underwriter Defendants*
9 *J.P. Morgan Securities, LLC, Morgan*
10 *Stanley & Co. LLC, Credit Suisse Securities*
11 *(USA) LLC, KeyBanc Capital Markets Inc.,*
12 *Merrill Lynch, Pierce, Fenner & Smith*
13 *Incorporated, Cowen & Company, LLC,*
14 *HSBC Securities (USA) Inc., Oppenheimer*
15 *& Co. Inc., Raymond James & Associates,*
16 *Inc., and Robert W. Baird & Co.*
17 *Incorporated*

1 **ORDER**

2 Pursuant to the parties' stipulation, and for good cause shown, IT IS SO ORDERED that:

- 3 1. Oral argument on the Confidentiality Motion will be heard on the Court's February
4 13, 2020 calendar at 2:00 p.m.
- 5 2. Following the Court's ruling on Lead Plaintiffs' motion to dismiss, the schedule set
6 forth in paragraph 13 of the stipulation above will govern all Defendants' responses to
7 the Amended Complaint or Second Amended Complaint.

8
9
10 DATED: 12/30/2019

11 By: 
12 Honorable Haywood S. Gilliam, Jr.
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26